

COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG
LONDON LOS ANGELES NEW YORK PALO ALTO
SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Covington & Burling LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018-1405
T +1 212 841 1000

By CM/ECF

December 19, 2023

The Honorable Jennifer H. Rearden
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *Portal Instruments, Inc. v. LEO Pharma A/S*, 1:22-cv-09156-JHR - Extension of Time to Respond to Plaintiff's Motion to Exclude the Testimony of Umesh Banakar

Dear Judge Rearden,

We represent Defendant LEO Pharma A/S (“LEO”), and write to respectfully request that the Court extend the time for LEO to respond to the Motion to Exclude the Testimony of Umesh Banakar (ECF No. 69) filed by Plaintiff Portal Instruments, Inc. (“Portal”).

LEO seeks an extension of its time to respond to Portal’s motion until 30 days after the upcoming January 30, 2024 settlement conference before Magistrate Judge Stewart D. Aaron—i.e., until February 29, 2024. LEO respectfully submits that an extension until February 29 will promote efficiency by enabling the parties to conserve their resources and focus their efforts on exploring a potential settlement, rather than engaging in expensive motion practice. If the January 30 settlement conference is successful, it will be unnecessary for LEO to prepare an opposition to Portal’s motion. If it is not successful, LEO will promptly submit its opposition within 30 days, which will not materially delay the resolution of this matter. An extension is also warranted in light of the unavailability of LEO’s in-house and outside counsel during the upcoming holidays.

COVINGTON

For these reasons, LEO respectfully requests an extension sufficient to permit it to defer preparing its opposition until after the settlement conference.

Absent an extension, LEO's response to Portal's motion would be due on December 28, 2023, three days after Christmas Day. There have been no previous requests for adjournments or extensions of this deadline, and the requested extension will not affect any other case deadlines. There are no scheduled appearances before the Court.

LEO sought Portal's consent to this extension but Portal declined, stating "Portal is willing to grant a reasonable extension to LEO's time to respond to its motion due to the holiday, but having this motion fully briefed will aid the parties in reaching settlement. Therefore Portal will consent to a two-week extension, from December 28, 2023 to January 11, 2024."

A two-week extension is insufficient because it will force LEO to incur substantial costs opposing Portal's motion that would be unnecessary if the settlement conference is successful. LEO also disagrees that completing briefing of Portal's motion to exclude LEO's expert will somehow "aid" the parties in reaching settlement. Even if LEO were to file its opposition on the existing schedule, it is unlikely that the Court would be able to rule in advance of the settlement conference. The impact of requiring full briefing before the conference would thus simply be to squander resources that might otherwise be available for settlement. Moreover, Portal will not suffer any prejudice, as the requested extension would not affect any other case deadlines.

We thank the Court for its attention to this matter.

Respectfully submitted,

/s/ Jordan S. Joachim

Jordan S. Joachim

cc: Counsel of record (via ECF)